



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 16, 2004

Ms. Veronica Ocanas
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2004-0403

Dear Ms. Ocanas:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 194633.

The City of Corpus Christi (the "city") received separate requests from two individuals for information relating to a promotional examination administered by the city. You state that you have provided the requestors with statistical information showing the number of incorrect responses to each examination question. However, you claim that the promotional examination and answer sheet may be excepted from disclosure under sections 552.101, 552.110, and 552.122 of the Government Code. You notified Dennis A. Joiner, the third-party consultant involved in the development of the examination at issue in the present requests, of his right to submit arguments to this office as to why the information should not be released. *See* Gov't Code § 552.305(d); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under act in certain circumstances). We have considered the claimed exceptions and reviewed the submitted information.

You contend that the submitted information is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, such as chapter 143 of the Local Government Code.¹ You claim that sections 143.032 and 143.034 of the Local Government Code deem promotional examinations confidential for purposes

¹We understand Corpus Christi to be a civil service city under this chapter.

of section 552.101. Section 143.032 provides that a person commits an offense if the person knowingly or intentionally reveals a part of a promotional examination to an unauthorized person or receives from an authorized or unauthorized person a part of a promotional examination for unfair personal gain or advantage. *See* Local Gov't Code § 143.032(h); *see also* Local Gov't Code § 143.032(i) (classifying violation of subsection (h) as criminal offense). Section 143.034 entitles eligible promotional candidates from fire or police departments to inspect their own promotional examination and answers, the examination grading, and the source material for the examination.² *See* Local Gov't Code § 143.034(a); *see also* Local Gov't Code § 143.034(b) (prohibiting eligible promotional candidate from removing examination or copying examination questions). We agree that the clear language of section 143.032 makes the information at issue confidential and permits its disclosure only to an authorized person. *Cf.* Open Records Decision No. 584 (1991) (statute making release of information criminal offense deems information confidential by law for purposes of section 552.101). Therefore, assuming the requestors are not authorized to receive the promotional examination and answer sheet, you must withhold this information under section 552.101 of the Government Code in conjunction with section 143.032 of the Local Government Code.³

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within ten calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

²Based on our review of the submitted materials, we understand that neither requestor is an eligible promotional candidate who would be entitled to inspect examination materials pursuant to section 143.034.

³Because this determination is dispositive of all information at issue, we do not reach the arguments submitted under sections 552.110 and 552.122 of the Government Code.

records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within ten calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



Steven W. Bartels
Assistant Attorney General
Open Records Division

SWB/seg

Ref: ID# 194633

Enc. Submitted documents

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